

Hillsborough, }  
Oct. 3, 1939. } No. 3053.

DOROTHY STONE *v.* MARGARET I. JOHNSON.

*Saidel, Lemelin, Hurley & Betley*, for the plaintiff, furnished no brief.

*Wyman, Starr, Booth, Wadleigh & Langdell*, for the defendant, furnished no brief.

*Per Curiam.* In *Stone v. Johnson*, 89 N. H. 329, the plaintiff sued in tort for the same injuries for which she now seeks recovery. It was there held, on her application to amend the case by claiming liability of the defendant personally instead of in a representative capacity, that the facts demonstrated her assumption of the risk. The application was therefore denied.

She now seeks to recover against the defendant personally in an action on the alleged contract. But it was stated in *Stone v. Johnson*, *supra*, 331, that she could not recover on the "alleged promise of the defendant to leave the lights burning" since "no action sounding in tort may be maintained for negligent failure to perform a contract." Such is understood to be the settled law of this jurisdiction. *Barrett v. Company*, 80 N. H. 354, 355, and cases cited.

*Judgment for the defendant.*